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DHS Review Completed

DEFINITIONS

"Agent of a foreign power." We are concerned that the definition as explained here may not be read to encompass those organizations or individuals who are not clearly directed by a foreign power but whose activities either receive material or similar support from or would not be engaged in without the actual approval of a foreign power. We believe that all involved agencies would benefit from a detailed analysis of this definition, considering both court decisions and the realities of international activities such as terrorism.

State Dept. review completed.

"Collection." We do not understand why this term, and the consequent limitations on such activity, should encompass publicly available information. We recommend adding the phrase "non-publicly available" following the words "intentional acquisition of" and before the word "information."

"Activities for which a warrant would be required if undertaken for law enforcement purposes." In the discussion of exigent circumstances (beginning on page 4 and concluding at the top of page 5) it is provided that if the Attorney General does not approve an

- 2 -

activity carried out without prior approval, then "the information obtained shall be destroyed and not disseminated to any person." This sounds fine in principle, but it would be gravely irresponsible to destroy or prevent dissemination of information which clearly relates to preventing any impending physical harm to persons or property. While it might be argued that the development of such information, whether deliberate or inadvertent, would constitute sufficient grounds for the Attorney General's ex post facto approval, we believe that we must now develop a clear understanding of what is intended and what the practice will be in such circumstances. It is particularly essential that operational personnel understand what they are to do with information of impending physical danger and that they are not placed in the position of having to violate established rules in order to accomplish that which is morally imperative. This issue should be discussed at our forthcoming meeting.

"Electronic communications equipment." We assume that this definition includes audiocountermeasures equipment. Is this correct?

- 3 -

"Foreign power." Which term, if any, within this definition would encompass a foreign-based political faction directed by or substantially composed of non-United States persons? If none, why not? We believe this should be discussed.

"In United States postal channels." We note that the expression used herein "and relevant case law" is important inasmuch as it helps clarify that the Customs border search authority for mail arriving in the United States from international channels is not impeded.

"Law enforcement." The final paragraph of this discussion appears contradictory in terms of the Secret Service's protective mission which we believe is clearly a law enforcement activity. The various types of information received by the Secret Service from law enforcement and U.S. foreign intelligence agencies is not limited to specific protective situations. Such information is also used to develop a general body of protective research which includes knowledge about circumstances arising from foreign

- 4 -

entities which might present dangers to Secret Service protectees. Such a spectrum of information is utilized in developing an overall appreciation of where dangers are located and what circumstances are generally threatening to protectees as well as in analyzing the protective situation in specific cases which may arise.

We believe it would be a substantial mistake to include this protective research function of the Secret Service as an "intelligence purpose" rather than as a "law enforcement purpose." This paragraph should therefore be amended by striking the phrase "in a specific case."

"Least intrusive means possible." In exigent circumstances it is unlikely that an agency will be able to establish that all less intrusive means of intelligence acquisition are infeasible. Furthermore, this standard appears to eliminate redundant, corroborative acquisition for the purpose of double checking intelligence already received. In a preventive context, a failure to utilize more than a single source

- 5 -

of intelligence acquisition may leave the protective forces with incomplete or incorrect information about a threat or danger. We believe that it must be clear that the expression "least intrusive means" may, in cases of grave consequences, include several corroborative methods of acquisition. This should be discussed at our meeting.

We also note that we do not understand what is meant by the last sentence in this discussion and wonder if the phrase "so as" should be inserted at the top of page 9, between the words "conducted" and "to minimize."

REQUESTS FOR ATTORNEY GENERAL APPROVAL

Section 1. The approval as to legality by the General Counsel of the intelligence agency should not be required other than in the form of his noted approval or concurrence in the request by his agency head. However, a written legal opinion should be encouraged where peculiarly difficult facts or cases of first instance are being presented to the Attorney General. Furthermore, Treasury might, on behalf of the Secret Service, request a particular foreign intelligence

- 6 -

procedure to be used by a collecting agency. The present language would not require our General Counsel's legal approval but would appear to require approval from the General Counsel of a collecting agency which will probably never see the request unless the Attorney General approves it or consults with him. The language should be amended by striking the words "intelligence agency" in the last line of page 10 and replacing them with "requesting agency." Although unnecessary, it might be specified that the Attorney General may seek a legal opinion from the intelligence collection agency if it is other than the requesting agency.

Section 2(g). The precise meaning of this is elusive.